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State of the Judiciary

STATE OF THE JUDICIARY ADDRESS

BY HONORABLE J. A. TURNAGE

CHIEF JUSTICE, MONTANA SUPREME COURT

A Report to the Joint Session
the 51st Legislature

February 1, 1989

Thank you Speaker Vincent, President Galt, Leaders of the Democratic and Republican Parties of the House and Senate, Members and staff of the 51st Legislature, distinguished quests, ladies and gentleman.

Woodrow Wilson observed at the beginning of this Century that "So far as the individual is concerned, a constitutional government is as good as its courts. No better, no worse."

As we turn our attention this year to a Montana Centennial Celebration, it is appropriate that we reflect on the health of our Montana Judicial System. I think we can say with pride that the last hundred years have seen much progress in the development of our court system. Montana's constitutional government is healthy today because of our court system.

The opening of this 51st Legislative Session provides us all with an opportunity for celebration and introspection about where we have been and the challenges of the future. We take pride in our accomplishments this past biennium and look forward to continued achievements in the two years ahead for which you will set the course and direction during your present deliberations.

This year's State of the Judiciary Address will probably be shorter than that given any time since the beginning of such Addresses. This is possible because for the first time the State of the Judiciary is accompanied by an Annual Report on the Judiciary that outlines our judicial system and highlights important statistical information.

The 1988 Annual Report on the Judiciary is the first of an annual series aimed at telling the story of the Montana Judiciary, reporting activities and needs to the Legislature, and informing Montanans about their court system. The 1988 Annual Report is a modest beginning -- I commend it to you for your review.

This year I would like to concentrate in the few minutes available on some of the Judiciary's accomplishments and concerns.

In the last two years the Supreme Court has witnessed a continuing high level of appeals. While there was a slight drop in filings in calendar year 1987 (571 filings) the calendar year 1988 filings are the second highest in the Court's history -- 628 filings. This long-term upward trend in filings is consistent with projections that were made two years ago by the National Center for State Courts when the Court presented its case for retaining the seven member Court.

Preliminary information on 1988 District Court filings indicates that the caseload in 1988 is about even with the filings for 1987. Total criminal case filings were up significantly, however, over 1987.

An important accomplishment this year in Courts of Limited Jurisdiction was the training program. In 1988, nearly 6000 hours of individual training was provided to Limited Jurisdiction Court Judges. This training is a vital aspect of keeping our Judges up-to-date on judicial issues.

The various Boards and Commissions which assist the Supreme Court in accomplishing its administrative duties have experienced an increasing caseload and workload over the past few years. For example, applications to the Sentence Review Division have increased 57% since 1985 and cases filed with the Commission on Practice have increased by 31 percent in the same time period. The Boards and Commission have generally been able to handle these increased workloads without undue delay -- but not without some stress. The dedication of board and commission members--the great majority of whom are private individuals serving without compensation -- to accomplish their difficult tasks should not go unrecognized by either the Court or the Legislature. They deserve our gratitude and thanks.

I want to specifically acknowledge the invaluable help and assistance of the State Bar of Montana. Its officers and members have unselfishly provided to the Court and the people of this State many services that were rendered without charge. Without this assistance, the effective administration of justice would be made much more difficult.

I would now like to turn briefly to specific concerns that you have been asked to address during this Legislative Session.

First, the issue of judicial salary increases. Editorial writers across the State in recent months have been nearly unanimous in urging higher salaries for Montana Judges. The Kalispell Daily Inter Lake summarized the urgent need to raise judicial salaries by first noting that Montana judicial salaries were "dead last"

when compared to the all other states and U.S. territories. The editorial went on to say:

> Some one has to be last, of course, and if only our pride were at stake, we could stand it.
>
> Unfortunately, there is more at stake.
>
> Montana Judges are guardians of our state Constitution, our whole fabric of law. A hundred and fifty legislators pass laws for the governor to sign, but it is the judges who interpret those laws, who must decide how they apply to individual citizens. It is the judges who have the power to rule on disputes, to decide the custody of a couple's children, to confiscate property, to deny a man freedom or take his life.
>
> Montana has the distinction of having the nation's lowest paid judges. What most of us would want sitting in judgment in a critical situation is not the cheapest, but the best.

The judicial salary issue is one that is critical to the judicial system. In that system, the judge is the key ingredient to the fair and impartial administration of justice. Judges are entrusted with enormous discretion and an equal amount of responsibility. For the system to work and work without unnecessary delay, we must recruit and retain the best and brightest lawyers to the bench.

I would like to join the Governor in his recent call to the Legislature to "demonstrate progress in this important area." I would also like to commend the Senate Judiciary Committee for its efforts to recommend a committee bill on judicial salaries. The concept of a committee bill reminds us all that this important issue should not be partisan or the problem of a single sponsor -- but rather that it is a significant problem that threatens to erode the strength of a vitally important branch of government.

In a related issue, you will be asked to give approval to a bill this session dealing with judicial retirement. The bill provides a modest incentive to encourage experienced judges to remain on the bench after 15 years of service. It is a small investment in retaining the talent of veteran judges.

I urge the Legislature to seriously address the issues of increased judicial compensation and retirement as quickly as possible.

Finally, I would like to mention the important work that has been done this past year by the Supreme Court's Commission on Technology. The Commission has spent the last year studying the ways in which computers might help the judiciary meet the goals of modernizing judicial administration and improving the judiciary's ability to manage its administrative affairs.

The Commission found that the judiciary is woefully behind other governmental agencies in the acquisition and use of modern tools. Some courts still use carbon paper and many have to fight just to have the copy machine that most governmental offices take for granted.

Someone recently remarked in a national publication that the only reason the judiciary isn't still using quill pens is that there aren't enough people still raising geese! While there may be an element of truth to this quote in other states, I would quickly add that I know of no one in the Montana judiciary who is using antiquated equipment and methods because they think it is a good idea. Judicial officers throughout the state, when shown the potential of modern tools, have been eager to use them.

The Commission on Technology has recommended, and I believe we should all support, developing a long-range plan for enhanced use of computers in our court system. We should plan now for setting standards and developing a uniform system to assure that as we begin the next 100 years of Statehood, the judiciary is not left behind with inadequate and out-dated tools for administering our judicial system.

You have a bill before you sponsored as a committee bill by the House Judiciary Committee that will allow the judiciary to take some modest steps toward the goal of court automation. I urge you to give the bill serious attention.

Finally, on behalf of the judiciary, I would like to thank the legislative leadership on both sides of the aisle and the members of the Legislature for their support and willingness to listen to our accomplishments and concerns.

As each of you understand, there has been a developing trend in recent years in our Society that focuses an ever brighter light on the responsibility of our courts. Nearly without exception, ever significant social, economic, and political issue finds its way into our courtrooms for redress and resolution. Your continued commitment to maintaining a healthy court system is both necessary and greatly appreciated by the citizens of this great State.

You have a tough Legislative Session ahead of you. We wish you well in setting the State's course for the next two years!

Thank you for inviting the Court.

1988 Judicial Report

PROFILE OF THE MONTANA JUDICIAL SYSTEM

STRUCTURE OF THE COURT SYSTEM

The Judicial power of the State of Montana is vested in a three-tiered structure of appellate, general, and limited jurisdiction courts. These are represented respectively by the Supreme Court, District Courts, and Courts of Limited Jurisdiction.

In addition, legislatively created courts exist for the adjudication of special legal issues. The Workers Compensation Court and Water Court are examples of these specialty courts.

SELECTION AND REMOVAL OF JUDGES

All Judges in Montana are elected in nonpartisan elections. Supreme Court Justices are elected for eight-year terms; District Court Judges for six-year terms; and all other judges serve four-year terms.

Vacancies in the Supreme Court and District Courts are filled by election if a term has ended and by gubernatorial appointment if a vacancy occurred during a term. However, before a vacancy can be filled by gubernatorial appointment, the Judicial Nomination Commission must first submit a list of three to five nominees to the Governor from which the Governor must made an appointment. If the Governor fails to nominate within 30 days of receiving a list of nominees from the Judicial Nominations Commission, the Chief Justice or acting Chief Justice makes the appointment. Each person nominated must be confirmed by the State Senate. If the Senate is not in session the person nominated shall serve till the end of the next session of the Legislature. If the nomination is not confirmed by the Senate the office is vacant and another selection and nomination is made.

A vacancy in the office of Chief Water Judge is filled by appointment of the Chief Justice from a list of nominees submitted by the Judicial Nomination Commission.

A vacancy in the office of Workers' Compensation Judge is filled by appointment of the Governor from a list of nominees submitted by the Judicial Nomination Commission.

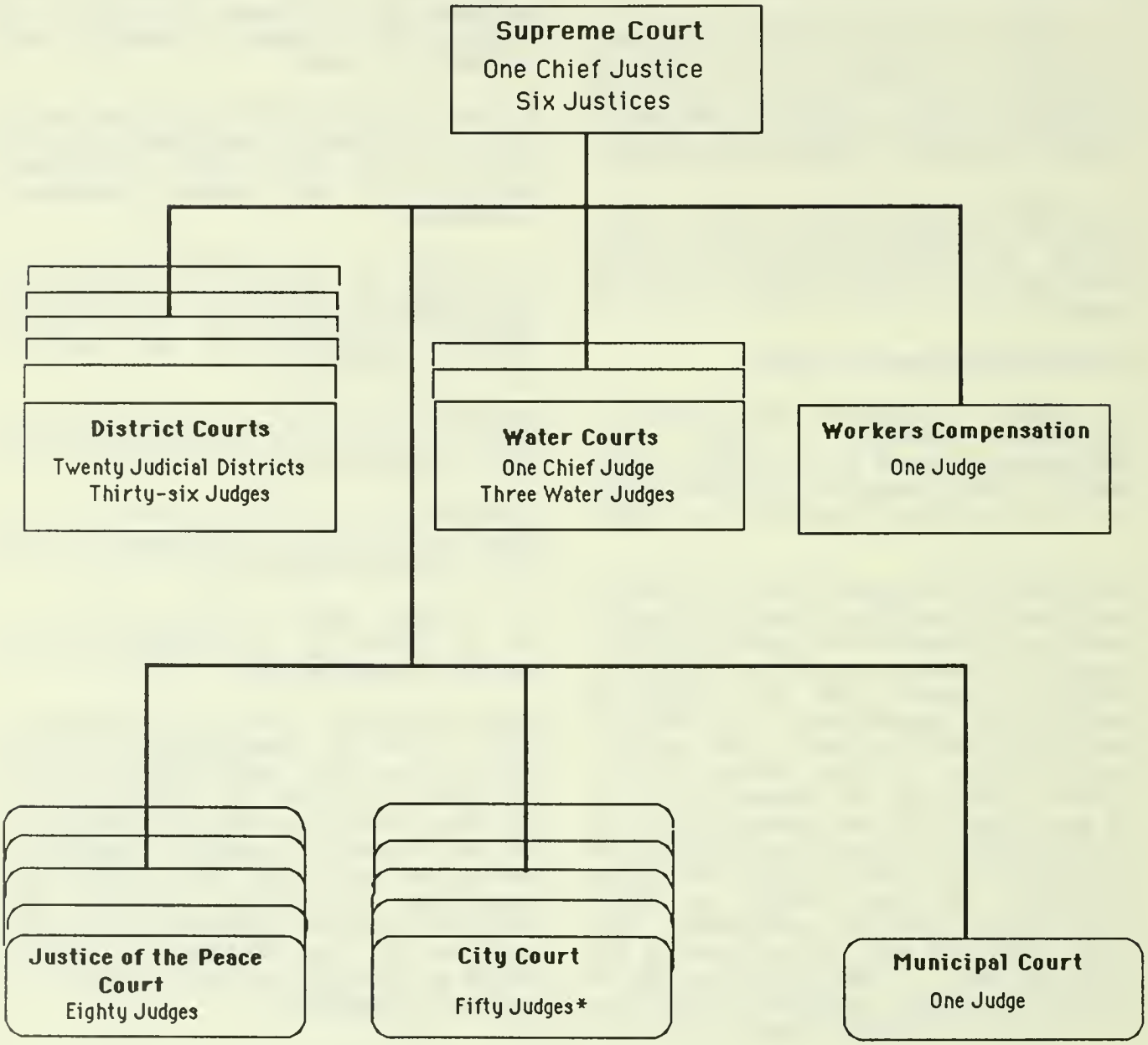
Vacancies in the office of Justice of the Peace are filled by appointment of the County Governing Body.

Vacancies in the office of City or Town Judge are filled by appointment of the City or Town Governing Body.

If a vacancy occurs in a Municipal Court, it is filled by appointment of the Municipal Governing Body.

Under the Montana Constitution the Supreme Court, upon the recommendation of the Judicial Standards Commission, may retire any justice or judge for disability that seriously interferes with the performance of his duties, or censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of the cannons of judicial ethics adopted by the Supreme Court, or habitual intemperance.

STRUCTURE OF THE MONTANA JUDICIARY



*Thirty seven Justices of the Peace also serve as City Judges.

THE MONTANA JUDICIARY

A BRIEF HISTORY

SUPREME COURT

The Territory of Montana was organized by an Act of Congress, approved May 26, 1864. Section 9 of the Act vested the judicial power of the State in a Supreme Court, District Courts, Probate Courts and Justice of the Peace Courts.

The first term of the Supreme Court of the Territory of Montana was held in Virginia City on May 17, 1865. Hezekiah L. Hosmer served as the first Chief Justice. Ammi Giddings and Lorenzo P. Williamson sat as Associate Justices.

In the early Territorial period, Justices of the Supreme Court each presided over one of the territory's judicial districts. This arrangement usually meant that when a case was appealed to the Supreme Court, one of the Justices personally had tried the case at the District Court level. This system changed in 1886 when Congress provided for the appointment of a fourth Justice and provided for disqualification on appeal of a Justice who had tried a case in District Court.

In the initial years of the Court, decisions about cases were rarely given in writing. In January, 1872, the Territorial Legislature provided for written reporting of Supreme Court decisions.

The July, 1889 term of the Territorial Supreme Court was the last term held before Montana became a State on November 8, 1889. When the Territorial Supreme Court adjourned sine die on October 5, 1889--the Territorial period ended and the modern era of statehood began.

Statehood brought several changes to Montana's Judicial System.

During Territorial days, Justices and District Judges were appointed by the President of the United States. After 1889, Montana turned to a system whereby they elected (by partisan ballot until 1936) justices, district, and local judges and judicial officers. They hoped thereby to encourage "more prompt and accessible administration of justice".

Article VIII of the 1889 Constitution established a three member Supreme Court with members elected to six-year terms.

During the first three decades of Statehood the Supreme Court remained at three Justices but the caseload required additional resources in order to keep current. The 1903 Legislature provided for the appointment of a three member Court Commission to assist the Court -- at a salary of $4,000 a year for Commissioners. When the 1905 Legislature failed to provide an appropriation for the Commissioners' salaries, they all resigned.

The 1919 Legislature increased the membership on the Supreme Court to five members and a second Court Commission was appointed in April 1920 to assist the Justices with the heavy caseload.

The Supreme Court remained at five members until the 1979 Legislature authorized two additional Justice positions to assist in handling the overburdened Court calendar.

DISTRICT COURTS

The 1889 Constitution established eight judicial districts with one District Judge in each district elected for a four-year term. The number of judicial districts have fluctuated over the last century. The growth in the number of counties beginning in 1911 led to the creation of twenty judicial districts by 1919. The number of judicial districts shrank to 16 in 1932, expanded to 19 in 1977 and settled at the present 20 in 1984.

The number of District Court Judges has likewise grown since the beginning of Statehood. Starting with eight District Court Judges in 1889, the Legislature quickly added second judges in the State's two largest cities -- Helena and Butte-- in 1891. Today, there are 36 District Court Judges.

COURTS OF LIMITED JURISDICTION

A majority of citizens receive their first exposure to the judicial system in the Courts of Limited Jurisdiction which are the Justice of the Peace, City and Municipal Courts. The Constitution of 1889 provided for the creation of the Justice Courts, Police and Municipal Courts. The Constitution of 1972 retained the Justice of the Peace Courts as a constitutional office but deleted any reference to Police or Municipal Courts,but allows the Legislature to create other courts such as City or Municipal Courts. Judges in the Courts of Limited Jurisdiction are elected for a four year term and are required to attend two annual training sessions supervised by the Supreme Court. Failure to attend the training sessions results in disqualification of the Judge from office.

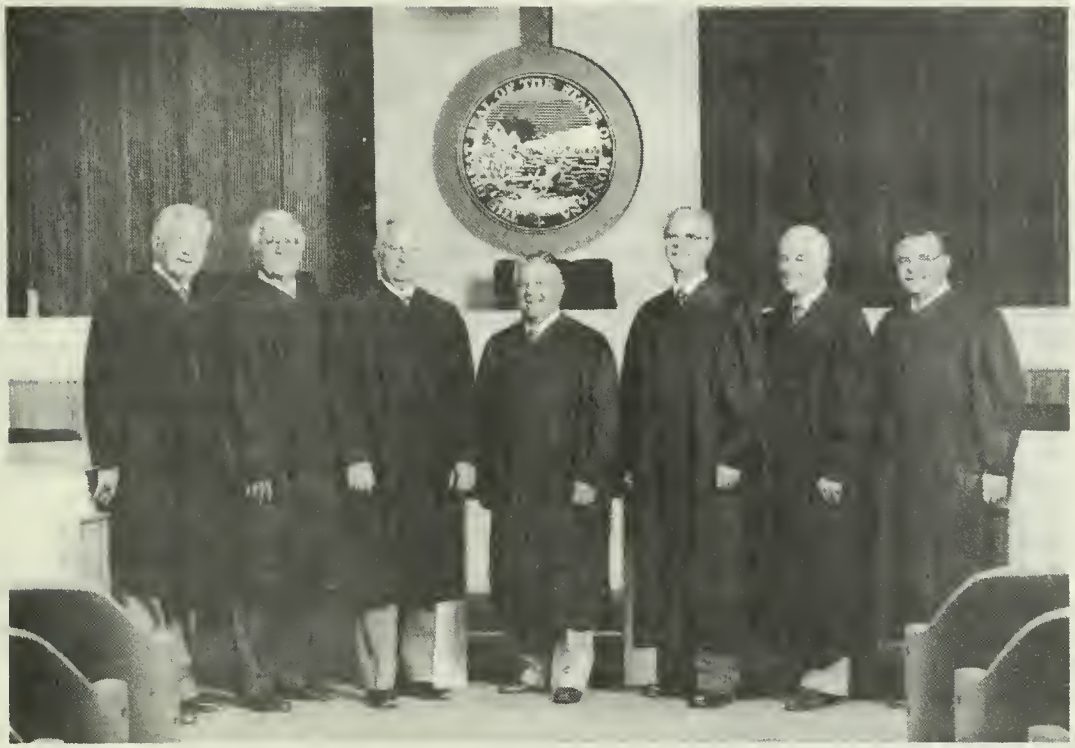
CHANGES AFTER 1972

The adoption of a new judicial article in the 1972 Constitution did not substantially change the traditional structures of the Montana Judiciary. It did however make a number of modifications. For instance, terms of Supreme Court Justices were extended from six to eight years and District Court Judges terms went from four to six years. Structurally more significant, the new Constitution adopted a version of merit recruitment for judicial officers that has been described as a unique hybrid of the "Missouri Plan". While the Governor appoints judicial officers when vacancies occur, candidates can file against a judge seeking reelection or for a position that is open due to a judge not seeking reelection. After 1974, if a sitting judge is unopposed when seeking reelection, voters are given a "Yes" or "No" choice as to whether to retain the judge.

Hezekiah L. Hosmer, First Chief Justice
Montana Territory Supreme Court 1864-1868
(Photo courtesy Montana Historical Society)

Henry N. Blake, First Chief Justice
Montana State Supreme Court 1889-1893
(Photo Courtesy MT Historical Society)

SUPREME COURT



Justices John C. Harrison, L. C. Gulbrandson, R. C. McDonough, Chief Justice J. A. Turnage, Justices Fred J. Weber, John C. Sheehy, William E. Hunt, Sr.

The Montana Supreme Court consists of one Chief Justice and six Justices. Each Justice is elected for an eight year term in a statewide nonpartisan election. Terms are staggered so that no more than two justice positions are scheduled for election at the same time. A Justice of the Supreme Court must be a citizen of the United States and have resided in Montana two years immediately before taking office and must have been admitted to practice law in Montana for at least five years prior to the date of appointment or election.

The Chief Justice of the Montana Supreme Court is elected to the position by the electorate in a statewide election. The Chief Justice is the administrative head of the Supreme Court, presides over Court conferences, and represents the Court at official state functions. The Chief Justice presides at all oral argument sessions of the Supreme Court. In the event of the absence of the Chief Justice, the Justice having the shortest term remainingto be served presides as Acting Chief Justice.

The Montana Supreme Court is the highest court of the State of Montana. It functions both as an appellate court, (Court of Review) and as a court of original jurisdiction. The Supreme Court has original and concurrent jurisdiction over extraordinary writs. Trials are not held by the Supreme Court; oral arguments before the Court consist solely of legal arguments made by attorneys.

Supreme Court daily operations are guided by the Court's Internal Operating Rules, which were promulgated by the Court to facilitate the prompt and efficient handling of all matters before it. The Justices meet twice a week in Court conferences where matters presently pending before the Court are discussed. At its Tuesday conference, the Court considers pending petitions for original

jurisdiction, motions which should be considered by the full Court, and other miscellaneous matters. At its Thursday conferences, the Court considers proposed opinions, petitions for rehearing, and appeal classifications.

Each appeal that comes before the Court is "classified" by a five Justice panel of the Court. The most common classifications of appeals are (1) full oral argument before the Court sitting en banc, or (2) submitted for decision, either to a panel of five-Justices or to the Court sitting en banc, solely on the briefs filed by the parties without oral argument. Once this determination is made, the case is assigned to a Justice for drafting an opinion. The Court attempts to render its decision within 120 days of submission.

The Supreme Court calendar is divided into "terms". Four such terms must be held each year at the seat of government, commencing on the first Tuesday of March, June, October and December. The Court generally sets an oral argument calendar for each month of the year except July and August.

The Supreme Court has broad constitutionally-based administrative authority over the Bench and Bar. The Court has supervisory control over all state courts and the responsibility to ensure the efficient and effective operation of the judicial system. The Court has general authority to adopt rules of practice and procedure (subject to disapproval by the Legislature), to maintain high standards of judicial conduct, and to regulate admission to the practice of law and the conduct of members of the legal profession.

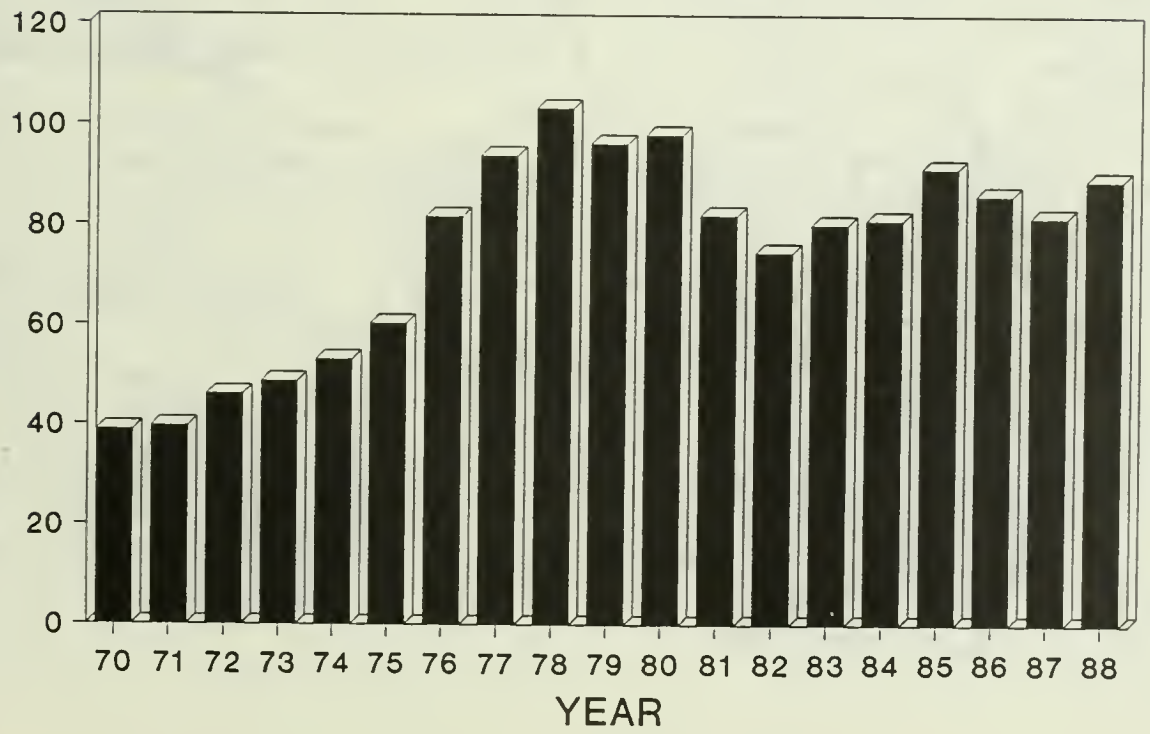
The Court fulfills its administrative responsibilities with the assistance of various court officers and boards and commissions. These are explained in detail in another section of this report.

Montana Supreme Court, Lewis and Clark County Courthouse 1901-1902. Justice Wm. S. Pigott, Chief Justice Theodore Brantly, Justice George Milburn. Seated C. T. Crane, Marshall and Henry Rickerts, Clerk of Court. (Photo courtesy MT Historical Society)

SUPREME COURT CASELOAD

	1987	1988	PERCENT DIFFERENCE
New Filings	571	628	10%
Civil	423	467	10%
Criminal	148	161	9%
Filings Carried Over From Previous Calendar Year	379	361	- 5%
Civil	293	276	- 6%
Criminal	86	85	- 1%
Total Cases Docketed	950	989	4%
Civil	716	743	4%
Criminal	234	246	5%
Dispositions	589	655	11%
Civil	440	482	10%
Criminal	149	173	16%
Cases Pending as of December 31,	361	334	- 7%
Civil	276	261	- 5%
Criminal	85	73	-14%

MONTANA SUPREME COURT
CASELOAD PER JUDGE 1970 - 1988



DISTRICT COURTS

There is a District Court in each of Montana's fifty-six counties. District Court's are Montana's Courts of General Jurisdiction. Montana District Courts exercise original and exclusive jurisdiction over all felonies, original jurisdiction over all cases in law and equity, and the power to issue such writs as are appropriate to their jurisdiction.

Appeals from Courts of Limited Jurisdiction to District Courts must be trials "de novo", which is a completely new trial held as if the original trial had never taken place.

District Judges are elected for six year terms. Requirements for the office of District Judge are United States citizenship, residency of the State for two years and being admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. In the event of a vacancy in the office of District Judge, the Governor appoints a successor from a list of nominees submitted by the Judicial Nomination Commission.

Article VII, Section 6, grants the Legislature the authority to establish Judicial Districts and to provide for the number of Judges in each District. The Legislature may change the number and boundaries of judicial districts and the number of judges in each district. Currently there are 36 District Court Judges in Montana in 20 Judicial Districts.

MONTANA
JUDICIAL DISTRICTS

CLERK OF THE DISTRICT COURT

Clerks of the District Court maintain complete records of cases filed and proceedings conducted in the District Court within the county they represent. Minutes of daily court proceedings are maintained by the Clerk, who also keeps records of such matters as court orders and decrees and a ledger of criminal cases. In addition the Clerk issues marriage licenses and has administrative responsibilities in terms of jury selection and keeps citizenship and naturalization records.

The Clerk of the District Court is an elected county official and serves a four year term. If a vacancy occurs in the Office of the Clerk of the District Court, the vacancy is filled by appointment of the Board of County Commissioners.

STATEWIDE JUDICIAL INFORMATION SYSTEM

The Statewide Judicial Information System (SJIS) is a computerized district court case history tracking system. The SJIS was implemented in July 1976 and was the result of both legislative and judicial desires to have timely and accurate statistical information on district court operations.

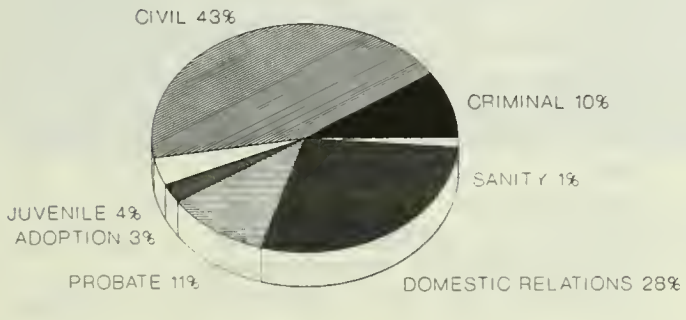
The State Judicial Information System provides vital data for managing and improving court operations at the trial court level. The System does this by tracking district court filings -- on a monthly and yearly basis -- by county and district of filing, by type of case, by the judge responsible for it, and by the length of time the case has been pending. This information aids court managers, legislators, and the citizens of Montana in making decisions regarding the allocation of available court resources.

The SJIS has undergone an indepth evaluation in 1988 by the Office of the Court Administrator. In order to made the SJIS system more useful and timely, the Administrator's Office is investigating the possibility of moving SJIS from the current State mainframe environment to PC's. This would improve the capabilities of the SJIS and allow the eventual development of in-house docketing systems in district courts who have PC capability.

SJIS statistics are compiled in various report formats and distributed to district judges, state legislators, and other state officials and national organizations.

TOTAL CASES FILED STATEWIDE

1979



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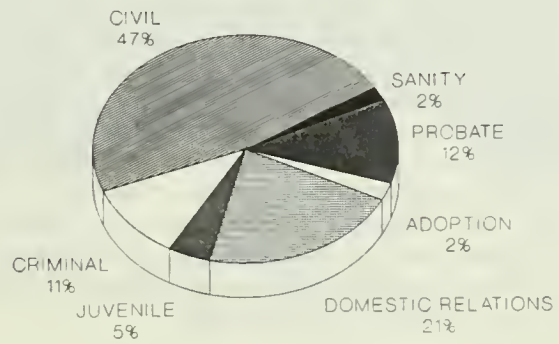


COURTS OF LIMITED JURISDICTION

JUSTICE COURTS

Justice of the Peace Courts are Montana's major Courts of Limited Jurisdiction. Their original jurisdiction presently includes most civil cases where a recovery will not exceed $3,500; all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding six months, including all traffic cases; or concurrent jurisdiction with the District Courts of all misdemeanors punishable by a fine exceeding $500 or imprisonment exceeding 6 months or both such fine and imprisonment. These Courts also exercise concurrent jurisdiction with the District Court in actions of forcible entry, unlawful detainer, and residential landlord-tenant disputes. They do not have jurisdiction over felonies except for initial appearances and preliminary hearings.

By law, there must be at least one Justice of the Peace Court in each of Montana's 56 counties, which must be located at the County Seat. A Justice of the Peace may be appointed by a City or Town Council to serve as City Judge. At present there are 81 Justices of the Peace with 34 of these also serving as City Judges.

Justices of the Peace are elected on a nonpartisan ballot for a four year term. Requirements for the Office of Justice of the Peace include United States citizenship and residency in the County where the Court is held for one year. Each elected or appointed Justice of the Peace is required to attend two annual training sessions supervised by the Supreme Court. Failure to attend the training sessions disqualifies the Justice of the Peace from office and creates a vacancy in that office. Since 1985 Justices of the Peace are also required to obtain a Certificate of Completion for a course of education and training prescribed by the Commission on Courts of Limited Jurisdiction. When a vacancy occurs in the office of Justice of the Peace, a successor is appointed by the Board of County Commissioners.

CITY COURTS

Montana statute allows the creation of City Courts. These courts have concurrent jurisdiction with Justice Courts for all misdemeanors punishable by a fine not exceeding $500 nor exceeding six months imprisonment. City Courts exercise exclusive jurisdiction over municipal ordinances. In a town or third class city, the governing body may designate a Justice Court of the County to act as City Court. In addition to the 34 Justices of the Peace who also serve as City Judges, there are 50 City Judges in the State.

A City Judge is elected on a nonpartisan ballot to a four year term and must have the same qualifications as those required of a Justice of the Peace. Like Justices of the Peace and Municipal Judges, City Judges are required to attend two annual training sessions supervised by the Supreme Court. Failure to attend the training sessions disqualifies the Judge and creates a vacancy in the office. City Judges are also required to obtain a Certificate of Completion for a course of education and training prescribed by the Commission on Courts of Limited Jurisdiction. When a vacancy occurs in the office of City Judge the position is filled by the governing body of the City or Town.

MUNICIPAL COURTS

Montana statute allows for the creation of Municipal Courts for those cities that have a population of 10,000 or more. A Municipal Court maybe established by City ordinance passed by a two-thirds vote of the governing body. In cities where a Municipal Court is established the office of City Judge is abolished. Presently there is only one Municipal Court in operation in the State of Montana. The Court is in Missoula. While a Municipal Court Judge must have the same qualifications as a District Court Judge,

they have the same jurisdiction as a Justice Court. A Municipal Court Judge is elected for a four year term on a nonpartisan ballot. Training requirements for a Municipal Judge are identical to those for City Judge and Justices of the Peace. A vacancy in the Office of Municipal Judge is filled by appointment by the governing body of the City.

The Supreme Court - 1903
Justice George R. Milburn, Chief Justice Theodore Brantly,
Justice W. L. Holloway (Photo Courtesy Mt. Historical Society)

SPECIAL JURISDICTION COURTS

WATER COURTS

Montana's Water Courts were created by the 1979 Legislative Session in response to concerns that the existing program of water adjudication, which was set up under the 1973 Water Use Act, would take hundreds of years to complete. The Legislature created the Water Court to "expedite and facilitate" the adjudication of existing water rights - those rights that were in existence prior to 1973.

There are four water divisions in the State that are formed by the natural divides between drainage and the border of the State. The four major water divisions in Montana are the Yellowstone River Basin, the Lower Missouri River Basin, and the Upper Missouri River Basin and the Clark Fork River Basin.

The Chief Water Judge is appointed by the Chief Justice of the Supreme Court from a list of nominees submitted by the Judicial Nominations Commission, and serves a four year term. Water Judges are designated for each water division by a majority vote of a committee composed of the District Judge from each single judge judicial district, and the Chief District Judge from each multiple judge judicial district. The term of office for Water Judges is four years. The Water Judges and their divisions are:

Chief Water Judge W. W. Lessley
Upper Missouri Division

Judge Leif Erickson,
Clark Fork Division

Judge Bernard W. Thomas,
Lower Missouri Division

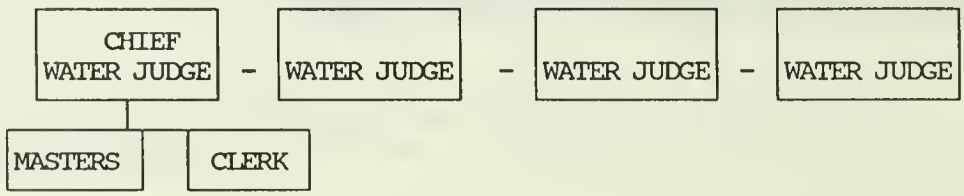
Judge Roy C. Rodeghiero,
Yellowstone Division.

Five Water Masters and four Clerks are employed by the Water Courts. The Water Judges and Masters conduct hearings and make decisions concerning any objections made to a preliminary decree of water rights. The Clerk of the Water Court and her deputy function in a manner similar to the Clerk of the District Court.

Funding for Water Courts is derived from various revenue sources which include coal tax money, resource indemnity trust money and various other sources of bond and income revenues.

The work of the Water Courts have been slowed by litigation concerning the Court's role in its adjudication of the State's pre-1973 water. However, out of the 85 basins within the State of Montana, 6 basins have final decrees, 5 basins have been preliminary decreed. The Fort Peck basin has been completed with compact approved by the Legislature. The total number of claims decreed is 108,238 out of a total of 205,000 in the entire state leaving 96,762 claims yet to be adjudicated. New decrees are still being issued but slowly because of problems with examinations. The Court is continuing to hear cases in the basins which have already been decreed.

ADMINISTRATIVE CHART



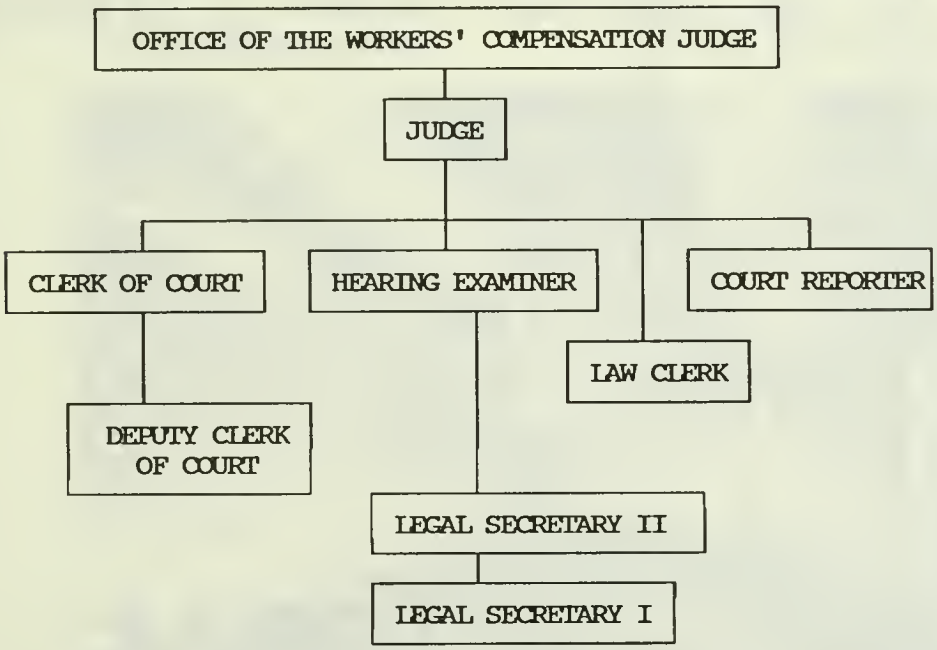
WORKERS' COMPENSATION COURT

The 44th Legislative Assembly created the Office of the Workers' Compensation Court on July 1, 1975 to adjudicate disputes arising out of the workers' compensation benefit program. The Workers' Compensation Court has exclusive jurisdiction to make determinations concerning disputes arising under Title 39.

To accomplish legislative intent, the Office of the Workers' Compensation Judge is organized and functions in much the same manner as a district court, except that it is not bound by common law nor statutory rules of evidence and follows the appropriate provisions of the Montana Administrative Procedures Act. Legislative changes in 1987 provide that Rules of Evidence do apply in cases where the injury occurred after July 1, 1987.

The Workers' Compensation Judge is appointed by the Governor from a list of nominees submitted by the Judicial Nominating Commission, and serves a six year term. The Workers' Compensation Judge must have the same qualifications necessary to hold the office of District Court Judge. The Office of the Workers' Compensation Judge is assigned to the Department of Administration for administrative purposes only.

WORKERS' COMPENSATION COURT



ADMINISTRATION OF THE JUDICIAL SYSTEM

The Constitution of the State of Montana charges the Supreme Court with the ultimate responsibility for the efficient and effective operation of the judicial system. The Constitution gives the Supreme Court "general supervisory control over all other courts" and allows the Supreme Court to make rules governing appellate procedure, practice and procedure for all other courts and to regulate admission to the bar and conduct of attorneys.

To assist the Court in fulfilling its administrative and supervisory duties, the Supreme Court relies on presiding District Court Judges, the Office of Court Administrator, the Clerk of the Supreme Court, and various boards and commissions. The activities of these offices and boards and commissions during calendar year 1988 are highlighted below.

OFFICE OF THE COURT ADMINISTRATOR

In October, 1975, The Supreme Court established the Office of Court Administrator to assist the Court with its administrative duties. The Legislature made the office statutory in 1977 (3-1-701). The Court Administrator is appointed by the Supreme Court and holds the position at the pleasure of the Court.

The Office of the Court Administrator assists the Supreme Court in preparing judicial budget proposals, monitoring and managing the judicial budget, coordinating judicial education services, providing central staff services to various boards and commissions, and providing long-range planning and research for statewide judicial needs.

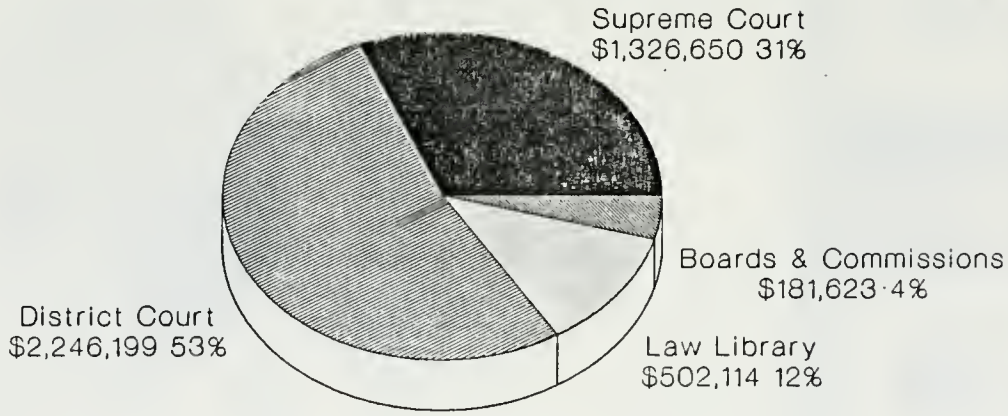
During 1988, the Office of the Court Administrator has developed docketing systems for the Commission on Practice, the Judicial Standards Commission, and the Sentence Review Division. The Office has also been involved in evaluation of statewide court automation and an assessment of the Statewide Judicial Information System.

Supreme Court Chambers, 1903, State Capitol Building
(Photo Courtesy Mt. Historical Society)

ERRATA

1. Substitute the following graph for the graph on page 18. The Water Court FY 89 appropriation was $469,664 - 100% of which is State Special Revenue.

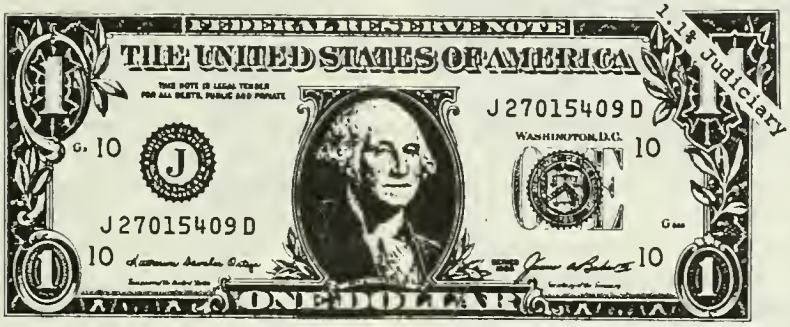
STATE JUDICIAL SYSTEM GENERAL FUND APPROPRIATION BY CATEGORY - FY 1989



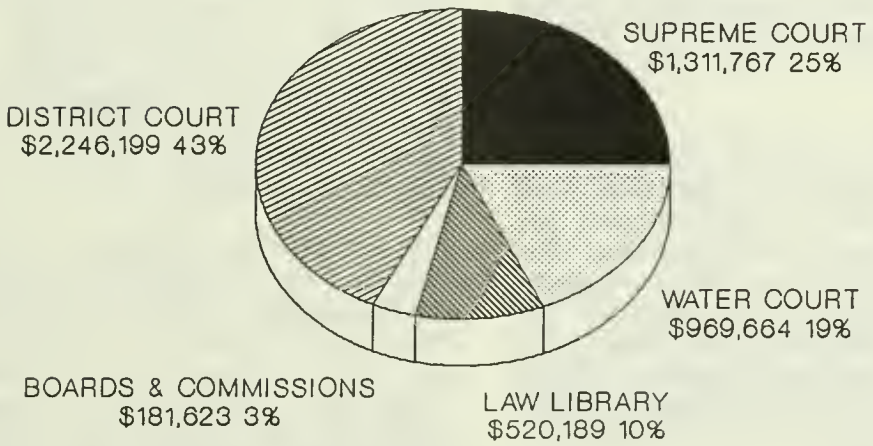
2. Page 23: COMMISSION ON THE USE OF APPROPRIATE TECHNOLOGY IN THE MONTANA JUDICIARY. The first sentence should read:

The Supreme Court established an eleven member Commission on the Use of Appropriate Technology in the Montana Judiciary in December, 1987.

JUDICIAL PORTION OF THE STATE'S BUDGET
1987 -1989 BIENNIUM



STATE JUDICIAL SYSTEM GENERAL FUND APPROPRIATION
BY CATEGORY - FY 1989



CLERK OF THE SUPREME COURT

The Clerk of the Supreme Court assists the Court in processing appeals through the appellate stage of review and final disposition. The Clerk is elected on a partisan ballot in a statewide election to a six year term. In addition to the Clerk of Court, there is a staff of three in the office.

The major responsibilities of the Office of the Clerk of the Supreme Court include processing all documents relative to the filing of appeals and processing documents relative to Original Proceedings -- such as Writs of Supervisory Control, Habeas Corpus, Mandamus and other extraordinary writs. The Clerk keeps the Supreme Court apprised of the status of active cases with a weekly status report.

In addition, the Clerk of Court takes minutes at all oral arguments, certifies documents, and maintains a roll of all attorneys who are licensed to practice in the State of Montana. The Clerk also collects annual attorney license tax, issues annual licenses, Certificates of Admission, and Certificates of Good Standing, and has an integral role in the bar admission process.

STATE LAW LIBRARY

The State Law Library is maintained and operated for the use of the members and staff of the Supreme Court, members and staff of the Legislature, state officers and employees, members of the bar, and the general public. The State Law Library is governed by a Board of Trustees which consists of the Chief Justice and Justices of the Supreme Court. The Board appoints the State Law Librarian.

The library's collection consists of laws and regulations, decisions of courts, treatises, textbooks, legal periodicals and other materials deemed necessary. In addition, the library maintains video and audio tapes which fulfill the requirements of continuing legal education for judges and attorneys.

The library participates in the U. S. Government Printing Office's Depository Library System, which allows it to receive and provide free access to federal government publications. During the past year the State Law Library was inspected by a federal official representing the Office of the Superintendent of Documents. Out of the seven categories which were evaluated the library received five excellent ratings. It was criticized for having inadequate clerical help for routine processing, shelving and retrieval of Government documents. This is a problem which is affecting all of the library's programs.

The State Law Library participates in an interlibrary loan program which allows access to a computerized system for the exchange of materials between libraries. Shared access to such a network helps eliminate purchase of seldom requested materials, as well as giving the citizens of Montana access to literally any book or article in the world. During Fiscal Year 1988, the Law Library mailed 5,000 books throughout the state, mailed 34,200 pages of photocopies, and reshelved 24,000 books used within the library. It also was the lead institution for a state wide telefacsimile project.

The State Law Library also provides answers to reference questions received via telephone or mail. The staff does not give legal advice or interpret the law, but rather helps patrons to do their own research. Each year the Library receives requests for research which include multi-state statute surveys, on line database searching and the review and recommendation of various books on particular subjects. The reference service provided by the Library increases each year. Computer search services, such as Westlaw and Lexis are available on a cost recovery basis.

ADVISORY BOARDS AND COMMISSIONS OF THE SUPREME COURT OF MONTANA

The Supreme Court utilizes the services of several boards and commissions in order to discharge its general administrative and supervisory responsibilities delegated by the Constitution. The various boards and commissions are charged by the Court to address specific issues or areas of expertise and to report problems and recommendations to the Supreme Court.

The activities of the advisory boards and commissions during the 1988-89 biennium are summarized below.

JUDICIAL NOMINATION COMMISSION

The Judicial Nomination Commission, created under 3-1-1001, MCA, is charged with the responsibility of providing the Governor with a list of candidates for appointment to fill any vacancy on the Supreme Court, District Court, or Workers Compensation Court, and to provide the Chief Justice of the Supreme Court with a list of candidates for appointment to fill any term or vacancy for the Chief Water Judge. The Commission is composed of seven members: four lay members from different geographical areas of the state who are appointed by the Governor; two attorneys, one from each congressional district, appointed by the Supreme Court; and one District Judge who is elected by the District Judges from around the state. Commission members serve a four year term and are not eligible for nomination to a judicial office during their term on the Commission or for one year thereafter.

When a vacancy occurs on the Supreme Court or in a District Court, the Commission is required to meet and within 30 days after the vacancy has been verified by the Chief Justice, and submit to the Governor a list of not less than three (nor more than five) nominees for appointment. The same process is true for a vacancy in the Office of Chief Water Judge, except that the nominees are made to the Chief Justice for eventual appointment. The Governor and Chief Justice are limited to making appointments from the list of nominees submitted by the Judicial Nomination Commission.

If the Governor fails to nominate within 30 days after receipt of a list of nominees, the Chief Justice (or acting Chief Justice) makes the nomination.

The Commission meets as necessary when a vacancy occurs or a term expires. The Commission met once in calendar year 1986, four time in calendar year 1987 and twice in calendar year 1988.

SENTENCE REVIEW BOARD

Anyone sentenced to a year or more in the State Prison may request judicial review of the sentence. Application for sentence review must be made within sixty days from the date the sentence was imposed.

The Sentence Review Division of the Supreme Court consist of three District Court Judges appointed by the Chief Justice for three-year terms. The Chief Justice designates one of the Judges as chairman.

The Sentence Review Board meets at least four times each year in the Administrative Building at the State Prison in Deer Lodge. (46-18-901).

The workload of the Sentence Review Board has increased steadily in the past few years. In 1985, 101 applications were filed with the Board, 128 in 1986, 140 in 1987, and 159 applications in 1988.

COMMISSION ON UNAUTHORIZED PRACTICE

The investigation of complaints alleging that a person is practicing law without having been admitted to the bar is the responsibility of the Commission on Unauthorized Practice. The Commission was

created the Supreme Court on June 30, 1976. Investigations of unauthorized practice had originally been the responsibility of the Commission on Practice.

The Commission on Unauthorized Practice is made up of five members who are appointed by the Supreme Court for two year terms. The Commission meets when necessary to investigate complaints of unauthorized practice of the law.

COMMISSION ON COURTS OF LIMITED JURISDICTION

Two years after the adoption of a new Constitution, the Supreme Court created the Commission on Courts of Limited Jurisdiction to assist the Court in setting general policies for the Limited Jurisdiction Court system. The Commission was charged with preparing a set of rules of practice and procedures designed to carry out the principles of the 1972 Constitution and to improve and make court practices uniform throughout the state. The Commission was also charged with studying the lower court system and making recommendation to the Supreme Court for improvements in the administration of justice in the limited jurisdiction courts.

Eight members were originally appointed to the Commission by the Supreme Court for an indefinite term.

The Commission was re-established in August, 1976, with a new emphasis on continuing education for limited jurisdiction judges. Currently, the Commission holds ten meetings each year and conducts two annual training sessions for all elected and appointed Justices of the Peace and City Judges. In calendar year 1986, Judges of the Courts of Limited Jurisdiction received 37.5 hours of training and in calendar year 1987, 33.75 hours of training were conducted. All City Judges, Municipal Judges and Justices of the Peace are required to attend the two training sessions per year.

The newly constituted Commission consists of nine members who are appointed by the Supreme Court for four year terms. Current membership on the Commission is represented by one District Judge, one city representative, one county representative, one State Bar representative, one City Judge representing a small community, one Justice of the Peace representing a small community, one Justice of the Peace representing a large community, one member at large, and the President of the Montana Magistrates Association.

BOARD OF BAR EXAMINERS

The Board of Bar Examiners is responsible for conducting the licensing examination for attorneys who wish to practice law in the State of Montana. In 1988, there were 2716 attorneys licensed to practice law in Montana.

The Board of Bar Examiners is appointed by the Supreme Court. Terms of the Board members are permanent, however, the Supreme Court may release, dismiss, or remove any member of the board and appoint other members at any time.

The Board of Bar Examiners conducts and assists in conducting the examination of applications for admission to the bar. The Board performs such duties and renders such assistance in the examination of applicants as may be prescribed by the Court and shall be governed and controlled by such rules as the Court may prescribe.

The Board offers an examination in February and July examination each year. Applicants are examined on their legal ability and character and fitness to practice law. The Montana state bar examination consists of the Multistate Bar Examination and the Montana Essay Examination.

STATE BAR EXAMINATIONS 1983 - 1988			
DATE OF EXAM	NUMBER OF APPLICANTS	NUMBER SUCCESSFUL	PERCENT SUCCESSFUL
2-83	24	17	71
8-83	38	32	84
2-84	31	23	74
7-84	98	81	83
2-85	39	22	56
7-85	125	108	86
2-86	34	20	59
7-86	119	85	71
2-87	46	33	72
7-87	90	87	97
2-88	25	17	68
7-88	89	78	88

COMMISSION CONCERNING RULES OF ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF MONTANA

A Commission Concerning Rules of Admission To The Practice of Law in the State of Montana was created by Court Order of the Supreme Court on June 18, 1985.The Commission was instructed to study the Court's existing rules on admission to the practice of law and to make recommendations to the Supreme Court as the Commission deems appropriate.

Membership on the Commission is represented by two non-lawyers, one district judge, one member of the Board of Bar Examiners, and seven members of the State Bar of Montana.

Members of the commission are appointed by the Supreme Court for an indefinite term.

COMMISSION ON RULES OF EVIDENCE

The Supreme Court established the Commission on Rules of Evidence by Order Number 12729 on April 5, 1974. The Commission on Rules of Evidence was instructed to study the present Code of Evidence and the practice thereunder, together with other developments and proposals in the field of evidenciary law and to make recommendations from time to time, for appropriate revision of the Code of Evidence.

The Commission on Rules of Evidence is made up of 13 members who are appointed by the Supreme Court for an indefinite term.

ADVISORY COMMISSION ON RULES OF CIVIL AND APPELLATE PROCEDURE

The Advisory Commission on Rules of Civil and Appellate Procedure was established by Order of the Supreme Court on February 15, 1983. The Commission is charged with analyzing changes in the Federal Rules of Civil Procedure to determine whether further modifications of the Montana Rules of Civil Procedure and the Montana Rules of Appellate Procedure should be adopted.

Modifications are necessary from time to time in order to coordinate with federal rules and procedure changes. The goal is to keep current with developing changes and to promote speedy resolution of litigation.

The Advisory Commission meets periodically to review rules and make recommendations to the Supreme Court for necessary modifications.

The eleven member Commission is appointed by the Supreme Court for an indefinite term.

COMMISSION ON THE USE OF APPROPRIATE TECHNOLOGY IN THE MONTANA JUDICIARY

The Supreme Court established an eleven member Commission on the Use of Appropriate Technology in the Montana Judiciary in December, 1982. The Commission was directed to review the current and future uses of appropriate technology within the Montana Judiciary. The Supreme Court's goal in establishing such a commission was to begin an assessment of automation needs for the Judiciary and develop a long-range plan for coordinated acquisition and use of computer equipment. As a final product, the Commission was asked to recommend to the Supreme Court technology changes and alternatives that would improve the operation of the judicial system.

A final report of the Commission is available by contacting the Office of the Court Administrator.

Appointments to the Commission to Study the Use of Appropriate Technology in the Montana Judiciary were for a two year term.

DISCIPLINARY BOARDS

COMMISSION ON PRACTICE

The Commission on Practice is responsible for answering complaints alleging unethical conduct by Montana attorneys.

The Supreme Court established the Commission by an Order dated January 5, 1965. Besides receiving and investigating complaints of alleged misconduct on the part of lawyers committed in the State of Montana, the Commission also has the responsibility for investigating and reporting on the merits of any petition for reinstatement to the practice of law.

The 1965 Order establishing the Commission on Practice called for the appointment of eight attorney members, one from each area established in the order. The Supreme Court appointed members from a list of three nominees submitted from each area. On August 22, 1979, the Supreme Court enlarged the Commission from eight to eleven members. The three additional members were non-attorneys. They are appointed at large by the Supreme Court. All members of the Commission on Practice serve a four year term.

The Commission caseload has increased significantly in the last few years. The Commission received 147 complaints in 1985, 165 complaints in 1986, 192 complaints in 1987 and 194 complaints in 1988.

SUMMARY OF COMMISSION ON PRACTICE COMPLAINTS FOR THE YEAR 1988

Number of Complaints Filed for the Period	194
Number of Complaints Pending at the end of 1987	119
TOTAL	313
Disposition of Complaints	
Dismissed by Commission	167
Private Reprimand	17
Public Reprimand	1
Suspension	6
Disbarment	4
Disciplinary Proceedings Instituted and Pending	11
Complaints Pending 12/31/88	107
TOTAL	313

JUDICIAL STANDARDS COMMISSION

Article VII, Section 11 of the Montana Constitution directed the Legislature to create a five member Judicial Standards Commission that is empowered to investigate complaints against any judge in the state and to hold hearings concerning the discipline, removal, or retirement of any judge. The work, investigations, and recommendations of the Commission are entirely independent of the Supreme Court.

Whenever the Commission makes a recommendation to the Supreme Court concerning discipline or removal of a judicial officer, the Court may take appropriate action concerning the recommendation. The Supreme Court may censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the Supreme Court of the State of Montana, or habitual intemperance. In addition, the Supreme Court may retire any justice or judge for a permanent disability that seriously interferes with the performance of his or her duties.

The Judicial Standards Commission is a five-member body consisting of two district judges from different judicial districts who are elected by all the district judges; one attorney who has practiced law in the state for at least ten years, appointed by the Supreme Court; and two citizens from different congressional districts who are not attorneys or judges of any court, active or retired. These two members are appointed by the Governor. Members of the Judicial Standards Commission serve a four year term.

The Commission meets quarterly to consider complaints. The Commission received 12 complaints in 1985, 11 complaints in 1986, 37 complaints in 1987, and 35 complaints in 1988.

SUMMARY OF JUDICIAL STANDARDS COMMISSION COMPLAINTS FOR THE YEAR 1988

Number of Complaints Filed for the Period	35
Number of Complaints Pending at the end of 1987	1
TOTAL	36
Disposition of Complaints:	
Dismissal by Commission	15
Private Reprimand	3
Public Reprimand	0
Suspension	0
Disbarment	0
Disciplinary Proceedings Instituted and Pending	0
Complaints Pending 12/31/88	18
TOTAL	36

Appendix

CHIEF JUSTICES
OF THE
MONTANA SUPREME COURT
1864 To Present

TERM SERVED	CHIEF JUSTICE
1864-1868	Hosmer, Hezekiah L.
1868-1871	Warren, Henry L.
1871-1887	Wade, Decius S.
1887-1889	McConnell, N. W.
1889-1893	Blake, Henry N.
1893-1899	Pemberton, William Y.
1899-1922	Brantly, Theodore
1922-1935	Callaway, Llewellyn L.
1935-1938	Sands, Walter B.
1938-1939	Goddard, O. P.
1939-1946	Johnson, Howard A.
1946-1946	Lindquist, Carl
1947-1956	Adair, Hugh R.
1957-1977	Harrison, James T.
1977-1978	Hatfield, Paul G.
1978-1985	Haswell, Frank I.
1985-	Turnage, J. A.

JUSTICES
OF THE
MONTANA SUPREME COURT
1864 To Present

TERM SERVED	JUSTICE
1864-1864	Giddings, Ammi
1864-1868	Willliston, Lorenzo P.
1865-1869	Munson, Lyman E.
1868-1879	Knowles, Hiram
1869-1871	Symes, George G.
1871-1872	Murphy, John Luttrell
1872-1875	Servis, Francis G.
1875-1885	Blake, Henry N.
1879-1888	Galbraith, William J.
1880-1886	Conger, Everton J.
1884-1886	Coburn, John
1886-1889	Bach, Thomas C.
1886-1888	McLeary, James H.
1888-1889	DeWolf, Stephen
1888-1889	Liddell, Moses J.
1889-1897	DeWitt, William H.
1889-1895	Harwood, Edgar N.
1895-1900	Hunt, William H.
1897-1897	Buck, Horace R.
1897-1903	Pigott, William T.
1900-1901	Word, Robert L.
1901-1907	Milburn, Gorge R.
1903-1926	Holloway, William L.
1907-1913	Smith, Henry C.
1913-1918	Sanner, Sidney
1918-1918	Pigott, William T.
1919-1924	Cooper, Charles H.
1919-1921	Hurley, John
1919-1920	Matthews, John A.
1919-1919	Patten, George Y.
1921-1933	Galen, Albert J.
1921-1922	Reynolds, Frank B.
1922-1923	Farr, George W.
1923-1929	Stark, Albert P.
1924-1925	Rankin, Wellington D.
1925-1937	Matthews, John A.
1926-1927	Toole, Warren
1927-1929	Myers, Henry L.
1929-1934	Angstman, Albert H.
1929-1933	Ford, Sam C.
1933-1939	Anderson, Ralph J.
1933-1939	Stewart, Sam V.
1935-1947	Morris, Claude F.
1937-1942	Angstman, Albert H.

TERM SERVED	JUSTICE
1939-1941	Arnold, Ralph L.
1939-1945	Erickson, Leif
1941-1945	Anderson, Albert
1943-1946	Adair, Hugh R.
1945-1961	Angstman, Albert H.
1945-1947	Cheadle, Edwin K.
1947-1949	Choate, I. W.
1947-1949	Gibson, Fred L.
1947-1952	Metcalf, Lee
1949-1961	Bottomly, R. V.
1949-1945	Freebourn, Harrison J.
1953-1957	Anderson, Forrest H.
1954 1957	Davis, Horace S.
1956-1968	Adair, Hugh R.
1957-1977	Castles, Wesley
1961-1967	Doyle, Stanley M.
1961-	Harrison, John C.
1967-1978	Haswell, Frank I.
1969-1970	Bonner, John W.
1970-1983	Daly, Gene B.
1977-1985	Shea, Daniel J.
1978-	Sheehy, John C.
1981-1987	Morrison, Frank B.
1981-	Weber, Fred J.
1983-	Gulbrandson, L. C.
1985-	Hunt, Sr., Wm. E.
1987-	McDonough, R. C.

CLERKS
OF THE
MONTANA SUPREME COURT
1864 to Present

TERM SERVED	CLERK OF COURT
1865-1866	Torbet, A. W.
1886-1867	Hosmer, J. Allen
1867-1870	Peck, Lucius S.
1870-1889	Alden, Isaac R.
1889-1892	Kennedy, William J.
1893-1899	Webster, Benjamin
1899-1905	Rickerts, Henry C.
1905-1915	Athey, J. T.
1915-1922	Carroll, John T.
1923-1924	Easton, Dana W.
1924-1935	Crosby, J. Ward
1935-1942	Porter, Arthur T.
1942-1942	Rigg, Peter T.
1942-1957	Murray, Frank
1957-1959	Hinman, Edna
1959-1982	Kearney, Thomas J.
1983-1988	Harrison, Ethel M.

450 copies of this public document
were published at an estimated cost
of $1.80 per copy, for a total cost
of $810.00, which includes $810.00
for printing and $0.00 for distribution